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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-218763

DATE: November 26, 1985

MATTER OF: Thomas J. Callahan

DIGEST:

A former employee of the Government Printing Office and member of the District of Columbia National Guard seeks recredit of 2 days' annual leave charged when military leave was denied. Military leave was denied because the employee had used his 15-day annual allotment of military leave under 5 U.S.C. § 6323(a) during annual training. The employee, as a member of D.C. National Guard, was also eligible to take military leave for annual training under 5 U.S.C. § 6323(c), which is not subject to the 15-day ceiling. In view of this, subsection 6323(c) leave may be substituted for subsection 6323(a) leave for annual training in order to provide military leave to cover the time he was charged annual leave.

Mr. Thomas J. Callahan, formerly an employee of the Government Printing Office (GPO) and currently an employee of the Internal Revenue Service, seeks recredit of 2 days of annual leave charged when he was denied military leave while an employee of GPO. GPO has requested a decision on the proper crediting of leave for Mr. Callahan.^{1/} For the reasons hereafter, we conclude that the 2 days of annual leave may be recredited.

BACKGROUND

Mr. Callahan is a member of the District of Columbia National Guard. The leave in question occurred during the 1983 fiscal year. Agency records show that Mr. Callahan was granted or denied military leave on the following occasions:

^{1/} The request for decision was submitted by the General Counsel of the Government Printing Office.

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Order No.	Training Dates	Days	Purpose	Authority Cited	Agency Action
73-3	4/25-29	5	Annual Training (AT)	32 U.S.C. § 503; Title 39, D.C. Code	5 Days Military Leave (ML) Granted
14-1	5/12-14	3	AT	32 U.S.C. § 503; Title 39, D.C. Code	2 Days ML Granted; 1 Weekend Day
21-1	6/16-17	2	AT	32 U.S.C. § 503; Title 39, D.C. Code	2 Days ML Granted
104-11	6/20-24	5	Full Time Training Duty (FTTD)	32 U.S.C. § 502(f)	5 Days ML Granted
25-1	6/27-7/1	5	AT	32 U.S.C. § 503; Title 39, D.C. Code	5 Days ML Granted
150-5	8/12-14	3	FTTD	32 U.S.C. § 502(f)	1 Day ML Denied; 2 Weekend Days
178-3	9/23-25	3	FTTD	32 U.S.C. § 502(f)	1 Day ML Denied; 2 Weekend Days

Mr. Callahan was denied military leave in August and September because he had exhausted the allotment of military leave provided by 5 U.S.C. § 6323(a). Although the National Guard subsequently amended orders number 150-5 and 178-3 to add a reference to title 39 of the District of Columbia Code as authority for the duty, the agency questions the propriety of that procedure.

ANALYSIS

The authority to grant military leave to Federal employees for the performance of military training or duty is set forth in 5 U.S.C. § 6323.^{2/} Section 6323(a)(1) states in pertinent part:

"(a)(1) * * * an employee as defined by section 2105 of this title * * * is entitled to leave without loss in pay, time, or performance or efficiency rating for active duty or engaging in field or coast defense training under sections 502-505 of title 32 as a Reserve of the armed forces or member of the National Guard. Leave under this subsection accrues for an employee or individual at the rate of 15 days per fiscal year * * *."

In addition to leave under section 6323(a) a member of the District of Columbia National Guard also is entitled to military leave under section 6323(c) which states:

"(c) An employee as defined by section 2105 of this title * * * who is a member of the National Guard of the District of Columbia, is entitled to leave without loss in pay or time for each day of a parade or encampment ordered or authorized under title 39, District of Columbia Code. This subsection covers each day of service the National Guard, or a portion thereof, is ordered to perform by the commanding general."

Section 6323(c) is a substantial reenactment of section 608 of title 39 of the District of Columbia Code. We have recognized that the provision which currently appears as 5 U.S.C. § 6323(c) authorizes unlimited military leave for members of the District of Columbia National Guard for specific purposes. 27 Comp. Gen. 78 (1947). In that case, we held that the 15-day limit currently found in 5 U.S.C. § 6323(a) has no application to employee members of

^{2/} This statute authorizes military leave for civil service employees in not only the executive branch, but also for employees in the judicial and legislative branches, such as employees of the GPO. See definitions in 5 U.S.C. §§ 2105 and 2101.

the District of Columbia National Guard who are entitled under 5 U.S.C. § 6323(c) to military leave with pay, without time limitation, when ordered by the Commanding General to duty in connection with parades or encampments.

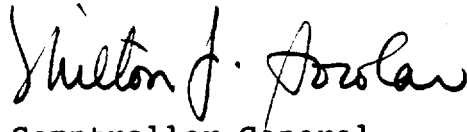
While we have disapproved the use of military leave under section 6323(c) to perform certain activities not within the scope of title 39 of the District of Columbia Code, the term "encampment" as used in section 6323(c) includes annual field training performed pursuant to the requirements of title 39 of the District of Columbia Code. Reginald L. Campbell, 60 Comp. Gen. 381 (1981). The annual training duty performed by Mr. Callahan in April, May, and June was directed by orders which cite 32 U.S.C. § 503, the general authority for participation of members of the National Guard in "encampments * * * or other exercises for field or coast defense instruction," as well as Permanent Order 66-1, dated November 12, 1982, promulgated by Headquarters of the District of Columbia National Guard. The Permanent Order relies in part on the authority of title 39 of the District of Columbia Code to require annual encampments of the Guard. Thus, the annual training duty performed by Mr. Callahan qualified for military leave under either subsection 6323(a) or 6323(c) of title 5.

Mr. Callahan was charged military leave under subsection 6323(a) until his allotment was extinguished. Military leave for additional annual training duty performed thereafter apparently was authorized for him under section 6323(c). The 2 days of full-time training performed in August and September for which he requested leave were charged to annual leave because he had by then exhausted his military leave under section 6323(a) and such training duty did not qualify under section 6323(c).

We do not find that the addition of the reference to title 39 of the District of Columbia Code to Mr. Callahan's orders number 150-5 and number 178-3 qualified the periods covered by those orders as service under section 6323(c). Since the orders also refer to this service as full-time training duty under 32 U.S.C. § 502(f), it was not a "parade" and it is not clear that it was an "encampment." However, since Mr. Callahan was entitled to use section 6323(c) military leave for annual training duty, part of which was charged to his section 6323(a) leave, we have no objection to the substitution of subsection 6323(c) military leave for a portion of his annual training in order that he may use subsection 6323(a) leave for the time he was charged

B-218763

annual leave. Action on Mr. Callahan's leave record should be taken accordingly.

for 
Comptroller General
of the United States